

FILED
JAMES BONINI
CLERK

2006 AUG 25 P 1:07

IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BYRON R. GUINThER,

Plaintiff,

V.

CIVIL ACTION NO.

2 : 06 cv 729

OFFICER JASON R. WEEKLEY,

JUDGE FROST

And

MAGISTRATE JUDGE KING

OFFICER RICHARD FLANAGAN,

And

MAYOR VINCE DiFABRIZIO,

**COMPLAINT AND
JURY DEMAND**

And

CHIEF OF POLICE MICHAEL KOVALYK

And

JOHN DOE 1,

And

JOHN DOE 2.

Defendants.

K. Robert Toy
Attorney At Law

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INTRODUCTION

1. This is a police misconduct case for money damages brought pursuant to 42 U.S.C. 1983 and 1988 and the Fourth and Fourteenth Amendments to the United States Constitution, and Article I, Section 14 of the Ohio Constitution and under the common law of Ohio.

JURISDICTION

2. The Court has jurisdiction over this case pursuant to 28 U.S.C. 1331 and 1343 and the Courts supplemental jurisdiction.

PARTIES

3. The Plaintiff was a citizen of the United States and residents of Athens County, Ohio at all times relevant.
4. Defendants were police officers and employees of the City of Bellaire in Belmont County, Ohio and acted as agents and servants of the City of Bellaire. They are being sued in their official and individual capacities.
5. Defendants Doe were at all times relevant employees, agents, and servants, of the City of Bellaire, Ohio. They are being sued in their official and individual capacities.

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6. All Defendants were acting at all times within the scope of their employment; in their official capacities; and under color of State law.
7. Vince DiFabrizio 2006 is being sued in his official capacities.
8. The City of Bellaire was at all times relevant, the employer, master, and principle of Defendants and John Doe 1, 2.

FACTS

9. On Saturday, August 28, 2004 Ohio Investigative Unit Agent, Byron Guinther, was working in the City of Bellaire along with other officers from the Ohio Investigative Unit. These agents visited a permit premises known as Flanagan's located at 3163 Belmont Street, Bellaire, Ohio. Agents visited the permit premises following a complaint filed in the Athens office alleging sales of alcohol to minors by an off duty police officer.
10. Agents utilized a confidential informant and conducted an alcohol compliance check on the permit premises.

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11. A nineteen year old informant working with the Ohio Investigative Unit walked into the bar and placed an order for a Bud Light beer with the lone male bartender, Sean Flanagan. Bartender Flanagan retrieved a bottle of beer and placed it in front of the informant. The informant paid \$2 for the beer and it was determined the bartender did not ask for identification or ask for any age of the person purchasing the alcohol.

12. Agent Guinther entered the permit premises at which time another Ohio Investigative Unit Officer handed him as evidence the twelve ounce bottle of beer that had been purchased by the informant and witnessed by this agent.

13. Agent Guinther and another agent observed bartender, Steve Flanagan talking to another male, later identified as Richard Flanagan, who is an employee of the bar as well as a Bellaire Police Officer.

14. Agent Guinther then exited the permit premises with the evidence an opened twelve ounce bottle of Bud Light beer and as he was leaving Officer Richard Flanagan, as well as another off duty police officer, identified as Vince DiFabrizio stood in the door way area of the bar. One of them yelled at Agent Guinther and told him he could not leave with the beer.

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15. Agent Guinther informed them that he was a police officer that the beer was evidence and that there were two other Ohio Investigative Unit Agents inside the bar. The police officer Flanagan, police officer DiFabrizio walked to the middle of the street and told Agent Guinther they did not care who he was. In response to Agent Guinther's inquiry both individuals stated that they were police officers for the Bellaire Police Department, both of them were in plain clothes and refused to show identification to Agent Guinther. They finally admitted that they were off duty at that time.

16. Police Officer Richard Flanagan stated that he was not only a police officer but that he also worked at the bar.

17. An agent for the Ohio Investigative Unit saw that Agent Guinther was being detained by these two individuals and walked towards both of the Bellaire policeman showing him his badge and credentials and stating that he was a police officer of the Ohio Investigative Unit and that Agent Guinther was also a police officer. Once again both police officers said that they did not care if they were police officers that they were not allowed to have an open container in public.

18. Police officer Flanagan and DiFabrizio then saw a uniformed officer of the Bellaire Police Department a Patrolman Weekley and told Patrolman Weekley to arrest Agent Guinther for open container.

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19. At this point Agent Lockhart, working in conjunction with Agent Guinther, approached Patrolman Weekley and identified himself and Agent Guinther as Ohio Investigator Unit Agents and informed him to contact his chief of police.

20. At approximately 10:40 p.m. Patrolman Weekley, after refusing to contact his chief told Agent Guinther he was under arrest for open container and grabbed Agent Guinther forcibly by the left elbow area and placed him under arrest for a minor misdemeanor. Once again Patrolman Weekley was informed that he was arresting an on duty police officer conducting an investigation. Agent Lockhart asked again if Agent Guinther was under arrest for a minor misdemeanor open container violation and Patrolman Weekley said yes.

21. Chief Robert Wallace of the Bellaire Police Department showed up at this time and Agent Guinther informed him that he was told that he was under arrest.

22. Agent Guinther signed the citation and Patrolman Weekley issued it to him. Agent Guinther was not released from custody until approximately 11:20 p.m.

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FIRST CLAIM

23. The acts of the Defendants (prosecution without probable cause, false arrest, malicious prosecution and unreasonable search and seizure) violated Plaintiffs constitutional rights under 42 U.S.C. §1983.

SECOND CLAIM

24. The acts of the Defendants violated Plaintiffs constitutional rights, guaranteed by Article I, Section 14 of the Ohio Constitution.

THIRD CLAIM

25. These acts of the Defendants constitute false arrest and imprisonment.

FOURTH CLAIM

26. These acts of the Defendants constitute malicious prosecution.

FIFTH CLAIM

27. These acts of the Defendants constitute trespass.

SIXTH CLAIM

28. These acts of the Defendants constitute the intentional infliction of emotional harm upon the Plaintiff.

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WHEREFORE, the Plaintiff requests that this Court:

- a. Award compensatory and punitive damages to the Plaintiff;
- b. Award reasonable attorney's fees and costs to the Plaintiff pursuant to 42 U.S.C. 1988;
- c. Award other relief this court may deem appropriate.

Respectfully Submitted,



K. Robert Toy, OH Sup.# 0011061
Trial Attorney for Plaintiff
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JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true copy of the foregoing *Complaint and Jury Demand* was served upon the following:

Chief Mike Kovalyk
Bellaire Police Department
City Building
32nd and Belmont Streets
Bellaire, OH 43906

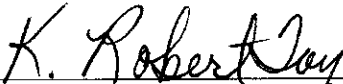
Officer Jason R. Weekley
Bellaire Police Department
City Building
32nd and Belmont Streets
Bellaire, OH 43906

Officer Richard Flanagan
Bellaire Police Department
City Building
32nd and Belmont Streets
Bellaire, OH 43906

Vince DiFabrizio
Mayor of Bellaire
City Building
32nd and Belmont Streets
Bellaire, OH 43906

by regular U.S. Mail, postage pre-paid this 25th day of August 2006.

Respectfully Submitted,


K. Robert Toy, OH Sup.#0011061
Trial Attorney for Plaintiff

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